

Senate Bill 202

By: Senators Jones II of the 22nd, Rhett of the 33rd, Rahman of the 5th, Goodman of the 8th and James of the 28th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 16 of Title 17 of the Official Code of Georgia Annotated, relating to
2 discovery, so as to change provisions relating to discovery in misdemeanor cases; to provide
3 for a defendant to opt into reciprocal discovery similar to provisions in felony cases; to
4 require the defendant to provide the prosecuting attorney with a list of witness and alibi
5 information; to provide for procedure; to provide for sanctions; to provide for related matters;
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 16 of Title 17 of the Official Code of Georgia Annotated, relating to discovery, is
10 amended by revising Article 2, relating to discovery in misdemeanor cases, as follows:

11 "ARTICLE 2

12 17-16-20.

13 (a) The provisions of this article shall apply ~~only~~ to misdemeanor cases ~~or to felony cases~~
14 ~~docketed, indicted, or in which an accusation was returned prior to January 1, 1995, if the~~

15 prosecuting attorney and the defendant do not agree in writing that the provisions of Article
16 ~~1 of this chapter shall apply~~ when at or prior to arraignment, or at such time the court
17 permits, the defendant provides written notice to the prosecuting attorney that such
18 defendant elects to have this article apply to the defendant's case. When one defendant in
19 a multidefendant case demands discovery under this article, the provisions of this article
20 shall apply to all defendants in the case, unless a severance is granted.

21 (b) Except as provided in subsection (c) of this Code section, this article shall not apply
22 to juvenile court proceedings.

23 (c) This article shall be deemed to have been automatically invoked, without the written
24 notice provided for in subsection (a) of this Code section, when a defendant has sought
25 discovery pursuant to Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' pursuant to
26 Part 8 of Article 6 of Chapter 11 of Title 15, or pursuant to the Uniform Rules for the
27 Juvenile Courts of Georgia when such discovery material is the same as the discovery
28 material that may be provided under this article when a written notice is filed pursuant to
29 subsection (a) of this Code section.

30 (d) This article is not intended to authorize discovery or inspection of attorney work
31 product.

32 17-16-21.

33 ~~(a) Prior to or at arraignment, every person charged with a criminal offense~~ the defendant
34 shall be furnished with a copy of the indictment or accusation and, on demand, with a list
35 of the witnesses on whose testimony the charge against such person is founded. Without
36 the consent of the defendant, no witness shall be permitted to testify for the state whose
37 name does not appear on the list of witnesses as furnished to the defendant unless the
38 prosecuting attorney shall state that the evidence sought to be presented is newly
39 discovered evidence which the state was not aware of at the time of its furnishing the
40 defendant with a list of the witnesses.

41 (b) If a defendant elects to have this article apply, the prosecuting attorney, not later than
42 ten days before trial, or as otherwise ordered by the court, shall provide the defendant with
43 a list of witnesses that the state intends to call as witnesses at trial. Such list shall include
44 the names, address and current locations, dates of birth, and telephone numbers of the
45 state's witnesses, unless for good cause the court allows an exception to this requirement,
46 in which event the defendant shall be afforded an opportunity to interview such witnesses
47 prior to the witnesses being called to testify. If the witness is a law enforcement officer,
48 the prosecuting attorney shall furnish the defendant with such officer's current work
49 location and work phone number.

50 (c) Within ten days after the prosecuting attorney provides a list of witnesses, but no later
51 than five days prior to trial, or as otherwise ordered by the court, the defendant shall furnish
52 the prosecuting attorney with a list of witnesses that the defendant intends to call at trial.
53 Such list shall include the names, address and current locations, dates of birth, and
54 telephone numbers of the defendant's witnesses, unless for good cause the court allows an
55 exception to this requirement, in which event the prosecuting attorney shall be afforded an
56 opportunity to interview such witnesses prior to the witnesses being called to testify.

57 (d) If prior to or during trial the prosecuting attorney or defendant learns of additional
58 witnesses whose identity, if known, should have been included in the information furnished
59 pursuant to this Code section, the discovering party shall notify the other party of the
60 existence and identity of such additional witnesses.

61 (e) The prosecuting attorney or defendant may call as a witness any individual listed on
62 either witness list.

63 ~~(b)~~(f) Nothing in this Code section shall be construed to require any person charged with
64 a criminal offense to be furnished the home address, date of birth, or home telephone
65 number of a witness who is a law enforcement officer or a nonsworn employee of a law
66 enforcement agency. Instead, in such cases, such person shall be furnished with the current

67 work location and work phone number of the law enforcement officer or nonsworn
68 employee of a law enforcement agency.

69 ~~(c)~~(g) Any formerly employed or retired law enforcement officer or nonsworn employee
70 of a law enforcement agency may use the address and phone number of the last agency
71 where he or she was employed as his or her contact information for purposes of this Code
72 section. Use of this subsection by an officer or employee shall constitute a waiver of any
73 claim by such officer or employee as to any defect of service or notice of hearing if the
74 service or notice was provided to the designated law enforcement agency and shall impose
75 an affirmative obligation on such officer or employee to keep current his or her personal
76 address and phone number information with such agency.

77 17-16-22.

78 (a) ~~At~~ If the defendant elects to have this article apply, the prosecuting attorney shall, at
79 least ten days prior to the trial of the case, disclose to the defendant shall be entitled to have
80 a copy of any statement given by the defendant while in police custody. The defendant
81 may make such request for a copy of any such statement, in writing, within any reasonable
82 period of time prior to trial.

83 (b) If the defendant's statement is oral or partially oral, the ~~prosecution~~ prosecuting
84 attorney shall furnish, in writing, all relevant and material portions of the defendant's
85 statement.

86 ~~Failure of the prosecution to comply with a defendant's timely written request for a~~
87 ~~copy of such defendant's statement, whether written or oral, shall result in such statement~~
88 ~~being excluded and suppressed from the prosecution's use in its case-in-chief or in rebuttal.~~
89 If the defendant elects to have this article apply, the prosecuting attorney shall, at least ten
90 days prior to the trial of the case, make available for inspection or copying by the defendant
91 copies of the police incident report and all supplemental police reports, if any, regarding
92 the occurrence which forms the basis of the charges.

93 ~~(d) If the defendant's statement is oral, no relevant and material, incriminating or~~
94 ~~inculpatory, portion of the statement of the defendant may be used against the defendant~~
95 ~~unless it has been previously furnished to the defendant, if a timely written request for a~~
96 ~~copy of the statement has been made by the defendant.~~

97 ~~(e)(d)~~ This Code section shall ~~not~~ apply to evidence information subject to disclosure
98 pursuant to this Code section which is discovered after a request has been filed. If a
99 request has been filed, such evidence information shall be produced as soon as possible
100 after it has been discovered.

101 17-16-23.

102 (a) As used in this Code section, the term 'written scientific reports' includes, but is not
103 limited to, reports from the Division of Forensic Sciences of the Georgia Bureau of
104 Investigation; an autopsy report by the coroner of a county or by a private pathologist;
105 blood alcohol test results done by a law enforcement agency or a private physician; and
106 similar types of reports that would be used as scientific evidence by the ~~prosecution in its~~
107 prosecuting attorney in the prosecution's case-in-chief or in rebuttal against the defendant.

108 ~~(b) In all criminal trials the defendant shall be entitled to have~~ If the defendant elects to
109 have this article apply, the prosecuting attorney shall, at least ten days prior to trial of the
110 case, disclose to the defendant a complete copy of any written scientific reports in the
111 possession of the prosecution which will be introduced in whole or in part against the
112 defendant by the ~~prosecution in its~~ prosecuting attorney in the prosecution's case-in-chief
113 or in rebuttal. ~~The request for a copy of any written scientific reports shall be made by the~~
114 ~~defendant in writing at arraignment or within any reasonable time prior to trial. If such~~
115 ~~written request is not made at arraignment, it shall be within the sound discretion of the~~
116 ~~trial judge to determine in each case what constitutes a reasonable time prior to trial. If the~~
117 ~~scientific report is in the possession of or available to the prosecuting attorney, the~~

118 ~~prosecuting attorney must comply with this Code section at least ten days prior to the trial~~
119 ~~of the case.~~

120 ~~(c) Failure by the prosecution to furnish the defendant with a copy of any written scientific~~
121 ~~report, when a proper and timely written demand has been made by the defendant, shall~~
122 ~~result in such report being excluded and suppressed from evidence in the prosecution's~~
123 ~~case-in-chief or in rebuttal.~~

124 17-16-24.

125 If the defendant elects to have this article apply, the prosecuting attorney shall permit the
126 defendant at a time agreed to by the parties or ordered by the court to inspect and copy or
127 photograph books, papers, documents, photographs, tangible objects, or copies or portions
128 thereof and to inspect audio and visual tapes or copies or portions thereof that are within
129 the possession, custody, or control of the state or prosecution and are intended for use by
130 the prosecuting attorney as evidence in the prosecution's case-in-chief or rebuttal at the
131 trial.

132 17-16-25.

133 (a) If the defendant elects to have this article apply, when the prosecuting attorney
134 provides a discovery response that includes the time, date, and place at which the alleged
135 offense was committed, the defendant shall serve upon the prosecuting attorney, within ten
136 days of the discovery response from the prosecuting attorney or ten days prior to trial,
137 whichever is later or as ordered by the court, a written notice of the defendant's intention
138 to offer a defense of alibi. Such notice by the defendant shall state the specific place or
139 places at which the defendant claims to have been at the time of the alleged offense and the
140 names, addresses, dates of birth, and telephone numbers of the witnesses, if known to the
141 defendant, upon whom the defendant intends to rely to establish such alibi unless
142 previously supplied.

143 (b) The prosecuting attorney shall serve upon the defendant within five days of the
144 defendant's written notice but no later than five days before trial, whichever is later, a
145 written notice stating the names, addresses, dates of birth, and telephone numbers of the
146 witnesses, if known to the state, upon whom the state intends to rely to rebut the
147 defendant's evidence of alibi unless previously supplied.

148 (c) If prior to or during trial a party learns of an additional witness whose identity, if
149 known, should have been included in the information furnished under subsection (a) or (b)
150 of this Code section, the party shall promptly notify the other party of the existence and
151 identity of such additional witness.

152 (d) Upon a showing that a disclosure required by this Code section would create a
153 substantial threat of physical or economic harm to a witness, the court may grant an
154 exception to any of the requirements of subsections (a) through (c) of this Code section.

155 (e) If the defendant withdraws the notice of intention to rely upon an alibi defense, the
156 notice and intention to rely upon an alibi defense are not admissible. However, the
157 prosecuting attorney may offer any other evidence regarding alibi.

158 17-16-26.

159 If at any time during the course of the proceedings it is brought to the attention of the court
160 that the state has failed to comply with the requirements of this article, the court may order
161 the state to permit the discovery or inspection, grant a continuance, or, upon a showing of
162 prejudice and bad faith, prohibit the state from introducing the evidence not disclosed or
163 presenting the witness not disclosed, or may enter such other order as it deems just under
164 the circumstances. If at any time during the course of the proceedings it is brought to the
165 attention of the court that the defendant has failed to comply with the requirements of this
166 article, the court may order the defendant to permit the discovery or inspection, interview
167 of the witness, grant a continuance, or, upon a showing of prejudice and bad faith, prohibit
168 the defendant from introducing the evidence not disclosed or presenting the witness not

169 disclosed, or may enter such other order as it deems just under the circumstances. The
170 court may specify the time, place, and manner of making the discovery, inspection, and
171 interview and may prescribe such terms and conditions as are just.

172 17-16-27.

173 Nothing in this article shall supersede the prosecuting attorney's duty to disclose all
174 evidence, known or that may become known to him or her, favorable to the defendant and
175 material either to guilt or punishment."

176

SECTION 2.

177 All laws and parts of laws in conflict with this Act are repealed.